

# ENVIRONMENTAL AND HISTORIC REVIEW HANDBOOK

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## **Environmental Review Release of Funds Process (Flow-Chart)**

<b>Release of Funds Process</b> <b>Determine Classification:</b> Exempt Categorically Excluded Environmental Assessment	<b>Exempt - No further review is required</b>		<ol style="list-style-type: none"> <li>1. Contact All Applicable Agencies (Exhibit B)</li> <li>2. Submit Contact Sheet and and Copies of Letters (Exhibit C)</li> <li>3. Complete Statutory Checklist (Exhibit D)</li> <li>4. Publish Notice of Intent to Request Release of Funds</li> <li>5. Submit Environmental Review Record to IHFA</li> <li>6. Receive Notice of Release of Funds from IHFA</li> </ol>
	<b>Categorically Excluded</b>	<b>Local Unit of Government</b>	<ol style="list-style-type: none"> <li>1. Contact All Applicable Agencies (Exhibit B)</li> <li>2. Submit Contact Sheet and and Copies of Letters (Exhibit C)</li> <li>3. Complete Statutory Checklist (Exhibit D)</li> <li>4. Submit Environmental Review Record to IHFA</li> <li>5. Receive Notice of Release of Funds from IHFA</li> </ol>
	Determine the type of applicant: Local Unit of Government Not-for-Profit Organization	<b>Not-for-Profit</b>	<ol style="list-style-type: none"> <li>1. Contact All Applicable Agencies (Exhibit B)</li> <li>2. Submit Contact Sheet and and Copies of Letters (Exhibit C)</li> <li>3. Complete Statutory Checklist (Exhibit D)</li> <li>4. Complete Environmental Assessment Checklist (Exhibit F)</li> <li>5. Publish Notice of Intent to Request Release of Funds and Finding of No Significant Impact</li> <li>6. Submit Environmental Review Record to IHFA</li> <li>7. Receive Release of Funds from IHFA</li> </ol>
	<b>Environmental Assessment</b> Determine the type of applicant: Local Unit of Government Not-for-Profit Organization	<b>Local Unit of Government</b>	<ol style="list-style-type: none"> <li>1. Contact All Applicable Agencies (Exhibit B)</li> <li>2. Submit Contact Sheet and and Copies of Letters (Exhibit C)</li> <li>3. Complete Statutory Checklist (Exhibit D)</li> <li>4. Complete Environmental Assessment Checklist (Exhibit F)</li> <li>5. Submit Environmental Review Record to IHFA</li> <li>6. Receive Release of Funds from IHFA</li> </ol>
		<b>Not-for-Profit</b>	<ol style="list-style-type: none"> <li>1. Contact All Applicable Agencies (Exhibit B)</li> <li>2. Submit Contact Sheet and and Copies of Letters (Exhibit C)</li> <li>3. Complete Statutory Checklist (Exhibit D)</li> <li>4. Complete Environmental Assessment Checklist (Exhibit F)</li> <li>5. Submit Environmental Review Record to IHFA</li> <li>6. Receive Release of Funds from IHFA</li> </ol>

## **Section 106 Historic Review Process (Flow-Chart)**

<b>Section 106 Review Process</b>  Determine if the project is: 1. Single Site - Done concurrently with Release of Funds Process 2. Scattered Site - Must be done prior to drawing funds but not application submission	<b>Local Unit of Government</b>	1. Initiate Section 106 Review Process	1. Determine the Scope of Identification Efforts Through the Area of Potential Effects
		2. Identify Historic Resources	2. Evaluate Historic Resources 3. Document Findings 4. Historic Properties Effectuated
		3. Assessing Effects on Historic Resources	1. LUG Makes A Determination of "Findings of No Adverse Effect" 2. Agreement/Disagreement of "Finding of No Adverse Effect" 3. LUG makes a determination of "Finding of Adverse Effect"
		4. Resolving Adverse Effects	
	<b>Not-For-Profit Organization</b>	1. Initiate Section 106 Review Process	1. Determine the Scope of Identification Efforts Through the Area of Potential Effects
		2. Identifying Historic Resources	2. Evaluate Historic Resources 3. Document Findings 4. NFP makes a determination of "Finding of No Historic Properties Effectuated" 5. Historic Properties Effectuated
		3. Assessing Effects on Historic Resources	1. Federal Agency Makes A Determination of "Findings of No Adverse Effect" 2. Agreement/Disagreement of "Finding of No Adverse Effect" 3. Federal Agency makes a determination of "Finding of Adverse Effect"
		4. Resolving Adverse Effects	

## Environmental and Historic Review Handbook Procedures and Instructions

### **I. POLICY**

The National Environmental Policy Act (NEPA) and “other Federal laws and authorities” require that an environmental review be conducted for all federally assisted actions (except those exempted under 24 CFR Part 58). IHFA Programs subject to this part include: 1. Community Development Block Grant (CDBG) and 2. HOME Investment Partnerships Program (HOME). The reviews should be viewed as a planning tool used by the Participating Jurisdiction to determine (1) whether its proposed action will have an impact on the environment, or (2) whether the environment will have an impact on the proposed action.

The value of the environmental review is to inform the proponent of a Federally assisted action: (1) of the existence of negative impacts on a site, (2) of means to mitigate negative impacts, (3) alternatives to the project if needed, and (4) when all other options fail that rejection of the proposed action may be the most prudent action to take. The environmental review is a means of providing decision makers with sufficient information on which to base wise choices.

**The completion of the environmental review process is mandatory before taking a physical action on a site, or making a commitment or expenditure of HUD or non-HUD funds. Using any portion of Federal funds for acquisition, rehabilitation, conversion, leasing, repair or construction before completing the environmental review process requires the denial of any Federal funds for that project.**

An environmental review process consist of two-phases. The first phase (Release of Funds Process) relates to the activities of the undertaking as a whole, and the second phase (Section 106 Historic Review) relates to each individual project site. The recipients may execute contracts and begin construction once:

1. IHFA has notified the recipient in writing that IHFA has authorized a “Release of Funds” for each budget line item; and
2. The Indiana Department of Natural Resources - Division of Historic Preservation and Archaeology (DHPA) or the National Advisory Council on Historic Preservation has notified the recipient in writing that the requirements of the Section 106 Historic Review Process have been fully met.

## **II. DEFINITIONS**

***Certifying Officer or Agency Official*** – It is the statutory obligation of the Federal agency to fulfill the requirements of Section 106 and to ensure that an agency official with jurisdiction over an undertaking takes legal and financial responsibility for the environmental review and Section 106 compliance.

***Consulting Parties*** – The following parties have consultative roles in the Section 106 process:

- a. State Historic Preservation Officer
  - i. The State Historic Preservation Officer (SHPO) reflects the interests of the State and its citizens in the preservation of their cultural heritage. In accordance with section 101(b)(3) of the act, the SHPO advises and assists Federal agencies in carrying out their Section 106 responsibilities and cooperates with such agencies, local governments and organizations and individuals to ensure that historic properties are taking into consideration at all levels of planning and development.
  - ii. If an Indian tribe has assumed the functions of the SHPO in the Section 106 process for undertakings on tribal lands, the SHPO shall participate as a consulting party if the undertaking takes place on tribal lands but affects historic properties off tribal lands, if requested in accordance with Sec. 800(c)(1), or if the Indian tribe agrees to include the SHPO pursuant to Sec. 800.3(f)(3).
- b. Indian Tribes and Native Hawaiian Organizations
  - i. Consultation on tribal lands.
  - ii. Consultation on historic properties of significance to Indian tribes and Native Hawaiian organizations.
- c. Representatives of local government. A representative of a local government with jurisdiction over the area in which the effects of an undertaking may occur is entitled to participate as a consulting party. Under other provisions of Federal law, the local government may be authorized to act as the agency official for purposes of Section 106.
- d. Applicants for Federal assistance, permits, licenses, and other approval. As applicant for Federal assistance or for a Federal permit, license, or other approval is entitled to participate as a consulting party as defined in this part. The agency official may authorize an applicant or group of applicants to initiate consultation with SHPO and others, but remains legally responsible for all findings and determinations charges to the agency official. The agency official shall notify the SHPO when an applicant or group of applicants in a specific program pursuant to this section by providing notice to all SHPOs. Federal agencies that provide authorizations to applicants remain responsible for their government-to-government relationships with Indian tribes.
- e. Additional consulting parties. Certain individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties.
- f. The public must be included in this process.
  - i. Nature of involvement. The views of the public are essential to informed Federal decision making in the Section 106 process. The agency official shall seek and

consider the views of the public in a manner that reflects the nature and complexity of the undertaking and in effects on historic properties, the likely interest of the public in the effects on historic properties, confidentiality concerns of private individuals and businesses, and the relationship of the Federal involvement to the undertaking.

- ii. Providing notice and information. The agency official must, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an undertaking and its effects on historic properties and seek public comment and input. Members of the public may also provide views on their own initiative for the agency official to consider in decision-making.
- iii. Use of agency procedures. The agency official may use the agency's procedures for public involvement under the National Environmental Policy Act or other program requirements in lieu of public involvement requirements consistent with this subpart.

***Environmental Impact*** - Any alteration of existing environmental conditions, or creation of a new set of environmental conditions, caused or induced in whole or in part, directly or indirectly, by a proposed undertaking.

***Finding of No Significant Impact (FONSI)*** - A document briefly presenting the reasons why an action, not otherwise categorically excluded or exempt, will not have a significant effect on the human environment and for which an Environmental Impact Statement, therefore, will not be prepared. The FONSI must include the environmental assessment (or summary of it) and note any other environmental documents related to it. If the assessment is included, the FONSI need not repeat any of the discussion in the assessment but may incorporate it by reference.

***Historic Property*** - Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places. This term includes artifacts, records, and remains that are related to and located within such properties.

***Human Environment*** - Interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. This means that economic or social effects are not intended by themselves to require preparation of an EIS. When an EIS is prepared and economic or social and natural or physical environment effects are interrelated, then the EIS will discuss all of these effects on the human environment.

***National Register*** – Ordinarily cemeteries, birthplaces, graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original location, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories:

- a. A religious property deriving primary significance from architectural or artistic distinction or historical importance; or

- b. A building or structure removed from its original location but which is primarily significant for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or
- c. A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his or her productive life; or
- d. A cemetery which derived its primary importance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or
- e. A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or
- f. A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or
- g. A property achieving significance within the past 50 years if it is of exceptional importance.

**NOI/RROF** - Notice of Intent to Request Release of Funds.

**Participating Jurisdiction (PJ)** - Any jurisdiction (a state, unit of general local government, or consortium) that has been so designated by HUD in accordance with 24 CFR 92.105. In Indiana, the following are HOME participating jurisdictions: Indiana (through IHFA), Anderson, Bloomington, East Chicago, Evansville, Fort Wayne, Gary, Hammond, Indianapolis, Lake County, Muncie, St. Joseph County Consortium, Terre Haute, Tippecanoe County Consortium.

**Project** - A project in the context of IHFA's HOME or CDBG program is a site or an entire building, or two or more buildings, together with the site or sites on which the building or buildings is located, that are under common ownership, management, and financing and are to be assisted with HOME or CDBG funds under commitment by the owner, as a single undertaking. Project includes all the activities associated with the site and building.

**ROF** - Release of Funds.

**RROF** - Request for Release of Funds.

**Undertaking** - An undertaking, as it pertains to an Environmental Review, is an activity, or group of generally integrally related activities, designed by a recipient to accomplish, in whole or in part, a specific goal.

### **III. CONDITIONAL COMMITMENT OF HOME OR CDBG FUNDS**

Responsible entities may enter into an agreement for the conditional commitment of HOME or CDBG funds for a specific project prior to the completion of the environmental review process. The responsible entity must ensure that any such agreement does not provide the state recipient, subrecipient or contractor any legal claim to any amount of HOME or CDBG funds to be used for the specific project or site unless and until the site has received environmental clearance. The following language is acceptable in an otherwise appropriately drafted agreement:

Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by [not for profit, for profit or state recipient] of a release of funds from HUD or IHFA under 24 CFR Part § 58. The parties further agree that the provision of any funds to the project is conditioned on the [not for profit, for profit or local unit of government] determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review.

### **IV. ENVIRONMENTAL REVIEW PROCESS**

The chief executive officer of the recipient is responsible for ensuring that the environmental review process has been carried out according to the requirements of Section 102 of NEPA and the related provisions in 40 CFR Parts 1500 through 1508, and 24 CFR Part 58, including the related Federal authorities listed in 24 CFR 58.5. IHFA will review the recipient's environmental review record (ERR) to ensure that the review was carried out according to the environmental review regulations as provided in 24 CFR Part 58.

Environmental Review requirements vary depending upon whether IHFA's award is made to a local unit of government or directly to a non-profit or for-profit organization.

- For awards to local units of government, the Chief Elected Official serves as the Certifying Officer for the Environmental Review, and
- For awards to non-profits and for-profits, the Executive Director of IHFA is the Certifying Officer.

### **V. RELEASE OF FUNDS PROCESS**

The Release of Funds Process is required for all developments that are Categorically Excluded or need an Environmental Assessment. Before the recipient can make a finding regarding the development in question, the recipient must first group together and evaluate as a single undertaking all individual activities that are related either geographically or functionally, or are logical parts of a composite of contemplated actions. This grouping of activities is known as aggregation and is more fully defined in 24 CFR § 58.32.

When grouping activities, keep in mind that several sites, each requiring some degree of environmental review, may actually be one HOME or CDBG undertaking (for example, 40 owner-occupied units being rehabilitated could be one HOME or CDBG undertaking). For the environmental review, the recipient must group activities for the entire undertaking. Some environmental factors can be considered on a program-wide basis while others will require site-by-site development analysis.

**The recipient must determine whether the various activities of the undertaking fit the classification of: Exempt, Categorically Excluded, or Environmental Assessment. The required actions in order to obtain the Release of Funds will vary depending upon the classification of the undertaking.**

If at any time during the period of the HOME or CDBG undertaking it becomes necessary to substantially revise or amend the scope of work, it may be necessary to repeat the environmental review process to assess the impact of proposed changes. In these cases, your IHFA Allocation Analyst should be contacted for guidance.

## **VI. DETERMINING THE CLASSIFICATION OF ENVIRONMENTAL REVIEW**

### **A. EXEMPT ACTIVITIES**

Activities that generally have no physical impact on the environment. Exempt activities include the following:

1. Environmental and other studies;
2. Information and financial services;
3. Administrative and management activities;
4. Inspections and testing of properties for hazards and defects;
5. Purchase of insurance;
6. Engineering and design costs; and
7. Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration.

The responsible entity is not required to undertake a NEPA level review (environmental assessment) or document that the activities comply with other Federal laws and authorities found at §58.5. Additionally, there is no requirement to publish public notices or that a Request for Release of Funds and Certification be submitted to IHFA or HUD. The

responsible entity must document its determination that the activity is exempt, and place the document into the Environmental Review Record.

*Example: An architectural firm is hired to design HOME-assisted new construction town homes. The use of HOME funds is exempt under §58.34(a)(8).*

**B. CATEGORICALLY EXCLUDED ACTIVITIES NOT SUBJECT TO §58.5 AUTHORITIES**

HUD has determined that certain categorically excluded activities would not alter any conditions that would require an environmental review or compliance determination under Federal laws and authorities cited in §58.5. Examples of activities that are categorical exclusions not subject to §58.5 include the following:

1. Tenant-based rental assistance.
2. Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and downpayment assistance, interest buy downs, and similar activities that result in the transfer of title.  
**Warning:** homebuyer assistance for units not already under construction must be treated as a categorical exclusion requiring compliance with the authorities cited in §58.5.
3. Housing pre-development costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities that do not have a physical impact.

*Example: A not for profit has been awarded HOME funds to provide downpayment assistance and closing costs to homebuyers. Such use of funds is categorically excluded from the requirements of NEPA [§58.35(b)(5)] as long as the unit is existing or currently under construction, as this activity is not subject to any of the statutes cited under this section.*

These activities are treated like exempt activities. The responsible entity is not required to undertake a NEPA level review or document that the activities comply with other Federal laws and authorities found at §58.5. Additionally, no public notices are published, and a Request for Release of Funds and Certification is not submitted to HUD or IHFA. The responsible entity must document its determination that the activity is a categorical exclusion not subject to §58.5 authorities, and place the document into the Environmental Review Record.

### **C. CATEGORICAL EXCLUDED ACTIVITIES SUBJECT TO §58.5**

A category of actions that do not individually or cumulatively have a significant effect on the human environment. Categorically excluded activities include, but are not limited to:

- typically replace or improve existing facilities or structures, i.e., they retain the original usage of a structure or facility;
- do not increase the size or unit density of the structure or facility being improved by more than 20 percent;
- do not change land uses (commercial to residential); and
- in the case of rehabilitation, the cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.

Examples of categorically excluded activities are as follows:

1. Minor rehabilitation of an existing property (multifamily or single family);
2. An individual action, such as new construction, major rehabilitation, moving or demolition, on a one to four family dwelling. [New construction or major rehabilitation of five or more units located within 2,000 feet of each other undertaken as a single action (e.g., a subdivision), is not categorically excluded.]

*Example: A multifamily building rehabilitated under the HOME program at a cost of \$450,000. The rehabilitation conducted did not involve a change of land use or a change in unit density by more than 20 percent. The replacement cost of the structure as determined by the insurance company providing coverage is \$1,500,000. The project therefore, is categorically excluded from NEPA as the amount of the rehabilitation work is only 30% of the replacement cost [\$450,000/\$1,500,000]. The level of rehabilitation work allowed before the 75% maximum level is reached is \$1,125,000 [\$1,500,000\*75%].*

#### **D. ENVIRONMENTAL ASSESSMENT (EA)**

Activities which cannot be determined to be exempt under §58.34 or categorically excluded from NEPA under §58.35, or which involve a categorical exclusion with “extraordinary circumstances” under §58.2(a)(3), require that a full Environmental Assessment be conducted. While an EA addresses the same issues found in a Compliance Determination review, it also includes the following analysis:

1. Examines and recommends feasible ways to eliminate or minimize adverse environmental impacts;
2. Examines alternatives to the project;
3. Includes a compliance determination for all other Federal laws and authorities cited in §58.5 and §58.6; and
4. Leads to a responsible entity’s Finding of No Significant Impact (FONSI), or a Finding of Significant Impact, thereby requiring the execution of an Environmental Impact Statement (EIS).

An EA, using an Environmental Assessment Format, is normally required for five or more units only if the sites are 2,000 feet apart or less and/or there are more than four units on a site. This includes:

1. New construction of five or more residential units;
2. Major rehabilitation and reconstruction of five or more residential units;
3. Conversion of non-residential land use to residential land use; and
4. Acquisition of vacant land for development when five or more units are involved.

*Example: A housing developer borrows \$2,000,000 in HOME funds to acquire a single parcel of 10 acres of land and construct 30 units of rental housing. Such a project is neither exempt nor categorically excluded from NEPA. The size of the project exceeds the thresholds of categorically excluded activities under §58.35(a)(4). Additionally, the proposed use of HOME funds for the project is not composed entirely of “soft costs” associated with exempt activities listed in §58.34. Consequently, the responsible entity must perform an Environmental Assessment in accordance with §58.36, as detailed at §58.40, before committing funds.*

#### **E. ENVIRONMENTAL IMPACT STATEMENT (EIS) WITH FINDING OF SIGNIFICANT IMPACT**

An environmental impact statement is a complex analysis required for proposed activities that would have a significant impact on the human environment in accordance with section

102(2)(C) of the National Environmental Policy Act. EIS thresholds stated at §58.37(a) and (b)(2) include:

1. Projects determined by a previously written environmental assessment, to have a potentially significant impact on the human environment; and
2. Projects involving 2,500 or more units being: removed, demolished, converted, rehabilitated, or constructed.

If you determine that an EIS is required, please contact your IHFA Allocation Analyst for the procedures.

## **VII. ENVIRONMENTAL REVIEW RECORD (ERR)**

The recipient is responsible for completing the steps required in order to Request a Release of Funds (RROF) from IHFA. Private citizens and organizations can object to the RROF for HOME and CDBG undertakings on certain procedural grounds relating to the environmental review (24 CFR § 58.75). Therefore, it is important that a recipient be diligent about meeting all procedural requirements. For example, the recipient must maintain a written record of the environmental review completed under 24 CFR Part 58 for each undertaking. This written record is known as the Environmental Review Record (ERR), and must be made available for public review.

The ERR must include a description of the undertaking, of all activities that the recipient has determined to be part of the undertaking, as defined in 24 CFR § 58.2(a)(3) and 58.32. The ERR must contain all the relevant documents, public notices, and written determinations required by 24 CFR Part 58, and any other information or evidence of action pertaining to the environmental review of the undertaking. It is the recipient's responsibility to compile the ERR for submittal to IHFA. IHFA is responsible to review and approve each step of the environmental review process completed by the recipient.

**If the Environmental Review Record is not complete on or before the application due date, the application will fail completeness. An Environmental Review Record Checklist is provided in the forms section.**

### **FOR LOCAL UNIT OF GOVERNMENT (LUG) RECIPIENTS**

## A. DETERMINE CLASSIFICATION OF PROGRAM ACTIVITIES

IHFA will notify each LUG recipient regarding Release of Funds for each “Exempt” program activity. However, it is the recipient’s responsibility to determine whether the remaining program activities are “Categorically Excluded” or require an “Environmental Assessment.”

A HOME or CDBG undertaking can only have one of these environmental classifications in addition to its Exempt activities. LUG recipients should examine the definitions of each classification given earlier in this chapter in order to determine which one is appropriate for your HOME or CDBG undertaking. **The recipient must complete an Activity Determination Form (See Exhibit A) identifying the environmental classification for each budget line item of the HOME or CDBG award.**

### 1. Determination that Activities are “Categorically Excluded”

- a. **Contact all applicable agencies.** The LUG recipient must, in writing, request comment on the proposed undertaking from Federal agencies dealing with environmental issues, applicable State agencies, local governments, and the public during the preparation of the environmental review. Copies of the request for comment should be sent to these agencies and individuals in addition to any private/public interest groups or agencies that have indicated an interest in or have special expertise for the type of undertaking. Refer to **Exhibit B** for a list of agencies to contact at a minimum.

To help local, state, and federal agencies respond more effectively to your request for comment, we suggest that your letter include a description of the undertaking, source of funds, and funding agency and that you include a telephone number at which agency staff may contact you. Additionally, attach a map to show the undertaking's location. A Contact Sheet is provided in **Exhibit C** to assist you in tracking your correspondence with the appropriate agencies.

- b. **Complete Statutory Checklist (See Exhibit D).** The Statutory Checklist assists recipients in determining the extent to which the proposed undertaking will impact various areas of environmental regulatory compliance. A listing of applicable statutes and regulations is provided in **Exhibit E** to assist you in completing this form.
- c. **Publish a Notice of Intent to Request Release of Funds (NOI/RROF).** The *NOI/RROF* indicates the LUG recipient’s intention to submit to IHFA a Request for Release of Funds no sooner than 7 days following the publication of the notice. This gives the public, state, and federal agencies at least 7 days to submit comments to the local unit of government before any other action is taken. (Sample notices can be found in **Exhibit H** for HOME or **Exhibit I** for CDBG awards.)

The notice further establishes a minimum of 15 days during which the public may comment to IHFA, after IHFA has received the request. IHFA must then wait a minimum of 15 calendar days after receipt of the Request for Release of Funds (RROF) for public comment prior to release of funds.

**All required minimum time periods are counted as calendar days. The first day of a time period begins on the day following the publication date of any notice (24 CFR § 58.21).**

The legal notice must be published in the newspaper of largest circulation in the area in which the project will be located. Additionally, if the undertaking is going to be conducted in multiple locations, the legal notice must be placed in the largest circulation for each of the site locations.

**Example timeline:**

March 15th	Publication date of <i>NOI/RROF</i>
March 16th - 22nd	Minimum 7-day local comment period
March 23rd	IHFA receives recipient's RROF
March 24th - April 7th	IHFA 15-day comment period
On or about April 8th	Release of funds by IHFA

The recipient may wish to utilize additional efforts to inform the public, announcing the availability of the statutory checklist. Such extra efforts could include holding public meetings or hearings locally, maintaining mailing lists of persons interested in a particular action and notifying them of the availability of the environmental review record for local review and comment.

- d. Complete the ERR Cover Sheet (See Exhibit N).** The form must be signed by the certifying officer of the local unit of government.
- e. Complete HUD Form 7015.15 (See Exhibit O).** Part 2 of the form must be signed by the chief executive officer of the legal recipient and Part 3 of the form must be signed by the person completing the environmental review record.
- f. Submit a copy of the Environmental Review Record (ERR) to your IHFA Allocation Analyst:**
  - Environmental Review Record Cover Sheet (**Exhibit N**)
  - Activity Determination Form (**Exhibit A**)

- Completed Statutory Checklist (**Exhibit D**)
- Contact Sheet (**Exhibit C**)
- Copy of all correspondence sent and received
- HUD Form 7015.15 (**Exhibit O**)
- An original publisher's affidavit for the NOI/RROF publication (**Exhibit H or I**)

It is important that the ERR submission be complete. In addition to being reviewed by IHFA staff, the ERR may later be reviewed in detail by the HUD environmental specialists to assure local and state compliance with federal environmental requirements.

- g. Receive notice of ROF from IHFA.** After a period of at least 15 calendar days from the date the RROF is **received** by IHFA and IHFA has reviewed the environmental information required under NEPA and has determined that all applicable special conditions are satisfied and there is no basis to withhold funds, IHFA will send a written notice of Release of Funds to the LUG recipient for the categorically excluded activities.

Once a recipient has received **both** a notification from IHFA of Release of Funds for each budget line item of the award **and** a notification from the Department of Natural Resources - Division of Historic Preservation and Archaeology (DHPA) or the National Advisory Council on Historic Preservation that requirements of the Section 106 Historic Review Process (as described later in this chapter) have been satisfied, the recipient may begin the HOME or CDBG undertaking.

## **2. Determination that an “Environmental Assessment” (EA) is Necessary**

All activities not included in the classifications covered under Exempt Activities and Categorically Excluded Activities require an “Environmental Assessment” as described below.

- a. Contact all applicable agencies.** The LUG recipient must, in writing, request comment on the proposed undertaking from Federal agencies dealing with environmental issues, applicable State agencies, local governments, and the public during the preparation of the environmental review. Copies of the request for comment should be sent to these agencies and individuals in addition to any private/public interest groups or agencies that have indicated an interest in or have special expertise for the type of undertaking. Refer to **Exhibit B** for a list of agencies to contact at a minimum.

To help local, state, and federal agencies respond more effectively to your request for comment, we suggest that your letter include a description of the

undertaking, source of funds, and funding agency and that you include a telephone number at which agency staff may contact you. Additionally, attach a map to show the undertaking's location. A Contact Sheet is provided in **Exhibit C** to assist you in tracking your correspondence with the appropriate agencies.

- b. Complete Statutory Checklist (See Exhibit D).** The Statutory Checklist assists recipients in determining the extent to which the proposed undertaking will impact various areas of environmental regulatory compliance. A listing of applicable statutes and regulations is provided in **Exhibit E** to assist you in completing this form.
- c. Complete Environmental Assessment Checklist (See Exhibit F).** Identify and assess the undertaking's potential environmental impacts. Those impacts can be significant, either singly or in combination. The environmental assessment determines the degree of significance. When the environmental assessment is complete, the recipient must make a determination of either:

  - A "Finding of No Significant Impact" (FONSI) in which the LUG recipient determines that the undertaking is not an action which may or will significantly affect the quality of the human or natural environment; or
  - A "Finding of Significant Impact" (FSI) in which the undertaking is deemed to be an action which may significantly affect the quality of the human or natural environment. If there is a Finding of Significant Impact, an Environmental Impact Statement must be prepared. Immediately contact your IHFA Allocation Analyst for further guidance. IHFA will work directly with the recipient to determine a course of action for fulfillment of the environmental requirements.
- d. Publish a Combined Notice of Intent to Request Release of Funds and Finding of No Significant Impact NOI/RROF/FONSI (See Exhibit J for HOME or Exhibit K for CDBG).** If completion of the Environmental Assessment results in a "Finding of No Significant Impact," the LUG recipient can proceed with preparing the notices and certifications required to remove the contract conditions related to environmental considerations. IHFA uses a Combined Notice: Notice of Intent to Request a Release of Funds and Finding of No Significant Impact (NOI/RROF/FONSI) as provided for under 24 CFR 58.44.

The *NOI/RROF/FONSI* states the LUG recipient's "Finding of No Significant Impact" and indicates the recipient's intention to submit to IHFA a Request for Release of Funds no sooner than 15 days following the

publication date. This gives the public, state, and federal agencies at least 15 days to submit comments to the local unit of government before any other action is taken.

The notice further establishes a minimum of 15 days during which the public may comment to IHFA, after IHFA has received the request. IHFA must then wait a minimum of 15 calendar days after receipt of the Request for Release of Funds (RROF) for public comment prior to release of funds.

The legal notice must be published in the newspaper of largest circulation in the area in which the project will be located. Additionally, if the undertaking is going to be conducted in multiple locations, the legal notice must be placed in the largest circulation for each of the site locations.

**All required minimum time periods are counted as calendar days. The first day of a time period begins on the day following the publication date of any notice (24 CFR § 58.21).**

**Example timeline:**

March 15th	Publication date of <i>NOI/RROF/FONSI</i>
March 16th - 30th	Minimum 15-day local comment period
March 31st	IHFA receives recipient's RROF
April 1st - April 15th	IHFA 15-day comment period
On or about April 16th	Release of funds by IHFA

The recipient may wish to utilize additional efforts to inform the public, announcing the availability of the environmental assessment. Such extra efforts could include holding public meetings or hearings locally, maintaining mailing lists of persons interested in a particular action and notifying them of the availability of the environmental assessment, and distributing copies of the assessment for local review and comment.

- e. **Complete the ERR Cover Sheet (See Exhibit N).** The form must be signed by the certifying officer of the local unit of government.
- f. **Complete HUD Form 7015.15 (See Exhibit O).** Part 2 of the form must be signed by the chief executive officer of the legal recipient and Part 3 of the form must be signed by the person completing the environmental review record.
- g. **Submit a copy of the Environmental Review Record (ERR) to your IHFA Allocation Analyst:**
  - Summary Page
  - Environmental Review Record Cover Sheet (**Exhibit N**)

- Activity Determination Form (**Exhibit A**)
- Completed Statutory Checklist (**Exhibit D**)
- Completed Environmental Assessment Checklist (**Exhibit F**)
- Contact Sheet (**Exhibit C**)
- Copy of all correspondence sent and received
- HUD Form 7015.15 (**Exhibit O**)
- An original publisher's affidavit for the NOI/RROF/FONSI publication (**Exhibit J or K**)

It is important that the ERR submission be complete. In addition to being reviewed by IHFA staff, the ERR may later be reviewed in detail by the HUD environmental specialists to assure local and state compliance with federal environmental requirements.

- h. Receive notice of ROF from IHFA.** After a period of at least 15 calendar days from the date the RROF is **received** by IHFA and IHFA has reviewed the environmental information required under NEPA and has determined that all applicable special conditions are satisfied and there is no basis to withhold funds, IHFA will send a written notice of Release of Funds to the LUG recipient for the Environmental Assessment activities.

Once a recipient has received **both** a notification from IHFA of Release of Funds for each budget line item of the award **and** a notification from the Department of Natural Resources - Division of Historic Preservation and Archaeology (DHPA) or the National Advisory Council on Historic Preservation that requirements of the Section 106 Historic Review Process (as described later in this chapter) have been satisfied, the recipient may begin the HOME or CDBG undertaking.

## **NOT-FOR-PROFIT (NFP) & FOR-PROFIT (FP) ORGANIZATIONS**

### **B. DETERMINE CLASSIFICATION OF PROGRAM ACTIVITIES**

IHFA will notify each NFP or FP recipient regarding Release of Funds for each “Exempt” program activity. However, it is the recipient’s responsibility to determine whether the remaining program activities are “Categorically Excluded” or require an “Environmental Assessment.”

A HOME undertaking can only have one of these environmental classifications in addition to its Exempt activities. Recipients should examine the definitions of each classification given earlier in this chapter in order to determine which one is appropriate for the HOME undertaking. **The recipient must complete an Activity Determination Form (See Exhibit A) identifying the environmental classification for each budget line item of the HOME award.**

#### **1. Determination that Activities are “Categorically Excluded”**

- a. **Contact all applicable agencies.** The recipient must, in writing, request comment on the proposed undertaking from Federal agencies dealing with environmental issues, applicable State agencies, local governments, and the public during the preparation of the environmental review. Copies of the request for comment should be sent to these agencies and individuals in addition to any private/public interest groups or agencies that have indicated an interest in or have special expertise for the type of undertaking. Refer to **Exhibit B** for a list of agencies to contact at a minimum.

To help local, state, and federal agencies respond more effectively to your request for comment, we suggest that your letter include a description of the undertaking, source of funds, and funding agency and that you include a telephone number at which agency staff may contact you. Additionally, attach a map to show the undertaking's location. A Contact Sheet is provided in **Exhibit C** to assist you in tracking your correspondence with the appropriate agencies.

- b. **Complete Statutory Checklist (See Exhibit D).** The Statutory Checklist assists recipients in determining the extent to which the proposed undertaking will impact various areas of environmental regulatory compliance. A listing of applicable statutes and regulations is provided in Exhibit E to assist you in completing this form.
- c. **Submit a copy of the Environmental Review Record (ERR) to your IHFA Allocation Analyst:**

- Summary Page

- Activity Determination Form (**Exhibit A**)
- Completed Statutory Checklist (**Exhibit D**)
- Contact Sheet (**Exhibit C**)
- Copy of correspondence with all applicable agencies
- HUD Form 7015.15 (**Exhibit P**) – only complete and sign Part 3

It is important that the ERR submission be complete. In addition to being reviewed by IHFA staff, the ERR will be reviewed in detail by the HUD environmental specialists to assure local and state compliance with federal environmental requirements.

- d. **IHFA Publishes Notice of Intent to Request Release of Funds (NOI/RROF).** Upon receipt of the completed Environmental Review Record, IHFA will publish the NOI/RROF in the newspaper of the largest circulation in the area in which the development will be located. Additionally, if the undertaking is going to be conducted in multiple locations, the legal notice will be placed in the largest circulation for each of the site locations. After the NOI/RROF has been published, public, state, and federal agencies will have at least 7 days to submit comments to IHFA.

The recipient may wish to utilize additional efforts to inform the public, announcing the availability of the environmental assessment. Such extra efforts could include holding public meetings or hearings locally, maintaining mailing list of persons interested in a particular action and notifying them of the availability of the environmental assessment, and distributing copies of the assessment for local review and comment.

After 7 days from the publishing date has expired and IHFA receives the original publishers affidavit from the newspaper, IHFA will forward the HUD Form 7015.15, Cover Sheet, and original publisher's affidavit to HUD for Release of Funds.

- e. **Receive notice of ROF from IHFA.** After a period of at least 15 calendar days from the date the RROF is received by HUD and HUD has reviewed the environmental information required under NEPA and has determined that all applicable special conditions are satisfied and there is no basis to withhold funds, HUD will send a written notice of Release of Funds to IHFA for the categorically excluded activities. IHFA will then forward the ROF notice to you.

Once you have received both a notification from IHFA of Release of Funds for each budget line item of the award and a notification from the Department of Natural Resources - Division of Historic Preservation and Archaeology (DHPA) or the National Advisory Council on Historic Preservation that requirements of the Section 106 Historic Review Process

(as described later in this chapter) have been satisfied, you may begin the HOME undertaking.

## 2. **Determination that an “Environmental Assessment” (EA) is Necessary**

All activities not included in the classifications covered under Exempt Activities and Categorically Excluded Activities require an “Environmental Assessment.”

- a. **Contact all applicable agencies.** The NFP recipient must, in writing, request comment on the proposed undertaking from Federal agencies dealing with environmental issues, applicable State agencies, local governments, and the public during the preparation of the environmental review. Copies of the request for comment should be sent to these agencies and individuals in addition to any private/public interest groups or agencies that have indicated an interest in or have special expertise for the type of undertaking. Refer to **Exhibit B** for a list of agencies to contact at a minimum.

To help local, state, and federal agencies respond more effectively to your request for comment, we suggest that your letter include a description of the undertaking, source of funds, and funding agency and that you include a telephone number at which agency staff may contact you. Additionally, attach a map to show the undertaking's location. A Contact Sheet is provided in **Exhibit C** to assist you in tracking your correspondence with the appropriate agencies.

- b. **Complete Statutory Checklist (See Exhibit D).** The Statutory Checklist assists the recipient in determining the extent to which the proposed undertaking will impact various areas of environmental regulatory compliance. A listing of applicable statutes and regulations is provided in Exhibit E to assist you in completing this form.
- c. **Complete Environmental Assessment Checklist (See Exhibit F).** Identify and assess the undertaking's potential environmental impacts. Those impacts can be significant, either singly or in combination. The environmental assessment determines the degree of significance. When the environmental assessment is completed, the recipient must make a determination of either:
  - A “Finding of No Significant Impact” (FONSI) in which the NFP recipient determines that the undertaking is not an action which may or will significantly affect the quality of the human or natural environment; or
  - A “Finding of Significant Impact” (FSI) in which the undertaking is deemed to be an action which may significantly affect the

quality of the human or natural environment. If there is a Finding of Significant Impact, an Environmental Impact Statement must be prepared. Immediately contact your IHFA Allocation Analyst for further guidance. IHFA will work directly with you to determine a course of action for fulfillment of the environmental requirements.

**d. Submit a copy of the Environmental Review Record (ERR) to your IHFA Allocation Analyst:**

- Summary page
- Activity Determination Form (**Exhibit A**)
- Completed Statutory Checklist (**Exhibit D**)
- Completed Environmental Assessment Checklist (**Exhibit F**)
- Contact Sheet (**Exhibit C**)
- Copy of correspondence with all applicable agencies
- HUD Form 7015.15 (**Exhibit P**) – only complete and sign Part 3

It is important that the ERR submission be complete. In addition to being reviewed by IHFA staff, the ERR will be reviewed in detail by the HUD environmental specialists to assure local and state compliance with federal environmental requirements.

**e. IHFA Publishes Notice of Intent to Request a Release of Funds and Finding of No Significant Impact (NOI/RROF/FONSI).** Upon receipt of the completed Environmental Review Record, IHFA will publish the NOI/RROF in the newspaper of the largest circulation in the area in which the development will be located. Additionally, if the undertaking is going to be conducted in multiple locations, the legal notice will be placed in the largest circulation for each of the site locations. After the NOI/RROF/FONSI has been published, public, state, and federal agencies will have at least 7 days to submit comments to IHFA.

The recipient may wish to utilize additional efforts to inform the public, announcing the availability of the environmental assessment. Such extra efforts could include holding public meetings or hearings locally, maintaining mailing list of persons interested in a particular action and notifying them of the availability of the environmental assessment, and distributing copies of the assessment for local review and comment.

After 15 days from the publishing date has expired and IHFA receives the original publishers affidavit from the newspaper, IHFA will forward the HUD Form 7015.15, Cover Sheet, and original publisher's affidavit to HUD for Release of Funds.

- f. **Receive notice of ROF from IHFA.** After a period of at least 15 calendar days from the date the RROF is received by HUD and HUD has reviewed the environmental information required under NEPA and has determined that all applicable special conditions are satisfied and there is no basis to withhold funds, HUD will send a written notice of Release of Funds to IHFA for the Environmental Assessment activities. IHFA will then forward the ROF notice to you.

Once a recipient has received both a notification from IHFA of Release of Funds for each budget line item of the award and a notification from the Department of Natural Resources - Division of Historic Preservation and Archaeology (DHPA) or the National Advisory Council on Historic Preservation that requirements of the Section 106 Historic Review Process (as described later in this chapter) have been satisfied, the recipient may begin the HOME or CDBG undertaking.

## **VIII. EMERGENCY SITUATION**

When the unit to be rehabilitated presents a serious threat to the occupant's health or safety, it may be necessary to repair or replace the specific items causing the threat prior to completing the Environmental Review process. The recipient must submit a request to IHFA for a waiver of the Environmental Review requirements for the specific home. The request must be received from the chief executive officer of the recipient, and the letter from the chief executive officer must be accompanied by a statement from an inspector documenting the nature of the emergency.

Although IHFA may allow for an emergency repair to occur prior to the completion of the Release of Funds or Section 106 Historic Review process, the recipient must then follow-through with a complete Environmental Review as described in this chapter. In the documentation submitted to the Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology (DHPA), the recipient must submit a full description of the repair or replaced item which specifies that it was done under an emergency waiver approved by IHFA in accordance with 24 CFR Part 58.34(a)(10).

**When an emergency situation arises, the recipient should immediately contact your IHFA Allocation Analyst for assistance.**

**C. IX. FLOOD MANAGEMENT: 8-STEP DECISION MAKING PROCESS  
(ONLY For CDBG: Voluntary Acquisition/Demolition Activities)**

**Whenever federal financial assistance is proposed for a development within a floodplain, compliance is required with the 8-step decision making process of Executive Order 11988, “Floodplain Management”, and implementing procedures contained in 24 CFR Part 55.**

The Executive Order sets floodplain management as a national priority and adds new prominence to the natural and beneficial floodplain functions as well as to the public benefit to be derived from their restoration or preservation. Federal programs are “to avoid direct or indirect support of floodplain functions as well as to the public benefit to be derived from their restoration or preservation. HUD policy strongly discourages the occupancy and modifications of the floodplain wherever there is a practicable alternative for the development in accordance with the Executive Order. Practicable alternative to be evaluated prior to a decision to carryout a development in the floodplain includes: 1) carrying out the proposed action at a location outside the floodplain (i.e. alternative sites); 2) other means which accomplish the same purpose of the proposed action (i.e. alternative actions); and 3) no action (i.e. disapproval of the site). The Executive Order does not apply to certain assisted activities as listed in 24 CFR 55.12(b) and (c).

“Floodplain” means the Special Flood Hazard Area (SFHA) identified on the flood maps published by the National Flood Insurance Program (NFIP) by the Federal Emergency Management Agency (FEMA). These maps should be reference when inquiring whether a development is located within a floodplain. Flood maps are generally available for viewing in a community’s landplaning or building permit office. Flood maps are also available through contacting [FEMA’s Map Service Center](#) by phone (800) 358-9616 or on the web at <http://www.fema.gov/fhm/>.

As mentioned above the decision making process for compliance contains eight steps, including public notices and an examination of practicable alternatives. The steps to be followed in the decision making process are:

**Step 1:** Determine whether the proposed action is located in a 100-year floodplain (or a 500-year flood plain for a Critical Action). If the proposed action would not be conducted in one of those locations, then no further compliance with this part is required.

**Step 2:** Notify the public at the earliest possible time of a proposal to consider an action in a floodplain (or in the 500-year floodplain for a Critical Action), and involve the affected and interested public in the decision making process.

A) Notices required under this part must be bilingual if the affected public is largely non-English speaking. In addition, all notices must be published in an appropriate local printed news medium and must be sent to federal, state, and local public agencies, organizations, and where not otherwise covered, individuals known to be interested in the proposed action.

B) A minimum of 15 calendar days must be allowed for comment on the public notice.

- C) The notice must state: the name of proposed location and description of the activity; the total number of acres of floodplain involved; and the responsible entity official and phone number to contact for information. The notice must indicate the hours and the responsible entities office at which a full description of the proposed action may be reviewed. (See **Exhibit L**)

**Step 3:** Identify and evaluate practicable alternatives to the proposed site or method may include:

- A) The consideration of practicable alternatives to the proposed site or method may include:
  - i) Location outside the floodplain (or 500-year floodplain for a Critical Action)
  - ii) Alternative methods to serve the identical development objective; and
  - iii) A determination not to approve any action.
- B) In reviewing the practicable alternatives, the recipient subject to 24 CFR Part 58 shall consider feasible technological alternatives, hazard reduction methods and related mitigation costs, and environmental impacts.

**Step 4:** Identify the potential direct and indirect impacts associated with the occupancy or modifications of the floodplain (or 500-year floodplain for a Critical Action).

**Step 5:** Where practical, design or modify the proposed action to minimize the potential adverse impacts within the floodplain (including the 500-year floodplain for a Critical Action) and to restore and preserve its natural and beneficial values. All critical actions in the 500-year floodplain shall be designed and built at or above the 100 year floodplain (in the case of new construction) and modified to include:

- A) Preparation of and participation in an early warning system;
- B) An emergency evacuation and relocation plan;
- C) Identification of evacuation route(s) out of the 500 year floodplain; and
- D) Identification marks of past or estimated flood levels on all structures.

**Step 6:** Reevaluate the proposed action to determine:

- A) Whether it is still practicable in light of its exposure to flood hazards in the floodplain, the extent to which it will aggravate the current hazards to other floodplains, and its potential to disrupt floodplain values; and
- B) Whether alternatives preliminarily rejected at Step 3 of this section are practicable in light of the information gained in Steps 4 & 5.

**Step 7:** A) If the reevaluation results in a determination that there is no practicable alternative to locating the proposal in the floodplain (or the 500-year floodplain for Critical Action), publish the final notice that includes:

- i) The reasons why the proposal must be located in the floodplain;
  - ii) A list of the alternatives considered; and
  - iii) All mitigation measures to be taken to minimize adverse impacts and to restore and preserve natural and beneficial values.
- B) In addition, the public notice procedures § 55.20(b)(1) shall be followed, and minimum of 7 calendar days for public comment before approval of the proposed action shall be provided. (See **Exhibit M**)

**Step 8:** Upon completion of the decision making process in Steps 1 through 7, implement the proposed action after receiving a Release of Funds (ROF) from IHFA. There is a continuing responsibility to ensure that the mitigating measures identified in Step 7 are implemented.

## **X. SECTION 106 HISTORIC REVIEW PROCESS**

**The recipient is responsible for completing both steps of an environmental review (the Release of Funds Process and the Section 106 Historic Review Process) before:**

- 1. Executing contracts or entering into any other commitments of HOME, CDBG, or other funds (other than for activities exempt from environmental review); and**
- 2. Initiating demolition, rehabilitation, or construction activities (regardless of the funding source for the activity).**

The recipient may execute contracts and begin construction once:

1. IHFA has notified the recipient in writing that IHFA has authorized a “Release of Funds” for each budget line item; and
2. The Indiana Department of Natural Resources - Division of Historic Preservation and Archaeology (DHPA) or the National Advisory Council on Historic Preservation has notified the recipient in writing that the requirements of the Section 106 Historic Review Process have been fully met.

Section 106 of the *National Historic Preservation Act* [36 CFR Part 800] requires that federally assisted undertakings take into account their effect on historic properties included in or eligible for the National Register of Historic Places and, prior to approval of an undertaking, in particular circumstances, to allow the National Advisory Council on Historic Preservation an opportunity to comment. [36 CFR Part 800.1 (a)].

A historic property is any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places. This term includes artifacts, records, and remains that are related to and located within such properties.

Recipients are required to plan and carry out their HOME or CDBG programs as necessary to minimize harm to historic properties and to consider mitigating measures where appropriate. Section 106 requires that the historic review process be completed prior to the approval of the expenditure of any Federal funds on an undertaking or prior to the issuance of any license or permit. [36 CFR Part 800.3 (c)].

The best way to reduce the time needed for Section 106 review is for recipients to plan their developments so as to avoid adverse effects on historic properties. This can be done if the recipient or its applicant identifies all historic properties or important archaeological sites at the beginning of project planning, and uses The Secretary of the Interior’s Standards for Historic

Preservation Projects as a guide to designing projects that will affect historic properties, and contacts DHPA before reaching any final decisions on project design.

***For non-scattered site undertakings***, the Section 106 Review must be completed concurrently with the Release of Funds process. Prior to publishing for Request for Release of Funds, the recipient must receive written correspondence from DHPA or the National Advisory Council on Historic Preservation stating that the Section 106 requirements have been fully met. In addition, the applicant must have completed their Section 106 Review Process and submitted their response letter from DNR-DHPA indicating they concur with the findings to their Allocation Analyst on or before the application due date.

***For scattered site undertakings***, the Section 106 Review does not need to be completed prior to the Release of Funds, but ***must*** be conducted on a case by case basis as specific project sites are identified. It is not necessary for the recipient to request comment from DHPA regarding the program as a whole as a part of the Release of Funds process. However, once specific sites are identified, the recipient ***must*** request comment from the DHPA for each property prior to executing contracts or beginning construction on the individual units. The recipient does not have to wait until all project sites have been identified to forward the necessary information to DHPA, but should forward detailed project information on each property as it becomes available.

## **A. Local Unit of Government – Section 106 Review Process**

Based on the new Section 106 regulations, only federal agencies (Local Units of Government) should be making determinations as to the following: “*finding of no historic properties affected*,” “*finding of no adverse effect*,” or a “*finding of adverse effect*.” Therefore, after the administrator or subrecipient collects all necessary documentation and makes one of the three determinations, the Local Unit of Government shall provide all necessary documentation to the State Historic Preservation Office (SHPO) regarding the determination.

### **♦ *Purpose of the Section 106 Review Process***

Section 106 of the National Historic Preservation Act requires the Local Unit of Government (LUG) take into account the effects of their undertakings on historic properties or areas of effect and afford the Advisory Council a reasonable opportunity to comment on such undertakings.

### ***Step 1: Initiating the Section 106 Review Process***

- a. The LUG must send a letter to the State Historic Preservation Officer (SHPO) authorizing consulting parties to participate in the Section 106 Review Process. The letter should state the undertaking, including a description of the undertaking (including address, city, township, and county), funding source, award number and identify all consulting parties (applicant, local governments, local historical societies or other preservation organizations who could have an interest in the undertaking).
- b. The public must be involved in the Section 106 Review Process. The LUG shall identify appropriate measures for seeking public input and for notifying the public of the

proposed undertaking. For example, the public could be made aware of the project at a city/town/county council meeting or through publishing a legal notice in the local newspaper; however, it is ultimately the LUG's decision as to what measures will be taken to get the public involved in the Section 106 process.

## ***Step 2: Identifying Historic Resources***

The current regulations (36 CFR Part 800) set forth that the LUG or its delegate (consulting party) "shall make reasonable and good faith efforts to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey."

### **◆ *Determining the Scope of Identification Efforts Through the Area of Potential Effects***

The LUG or its delegate (consulting party) needs to determine the area of potential effects, which means the geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking. It is especially important to note that the area of potential effects is not influenced by the preexisting awareness of historic or non-historic resources. Defining the area of potential effects is the first step for determining the scope of identification efforts and must be established before one begins to seek information to assess the potential historic properties. To define the area of potential effects, one must take into account effects that are direct or indirect, cumulative, later in time, or at a distance. Once a good faith effort had been made to define the area of potential effects, then it is necessary to consult with the Indiana SHPO.

### **◆ *Evaluating Historic Resources***

Below is a list of several sources that can be used in evaluating historic resources:

- a. The National Park Service (NPS) maintains a database list of all properties that are currently listed in the National Register of Historic Places. The information is available through the NPS web site, [www.cr.nps.gov/nr/](http://www.cr.nps.gov/nr/).
- b. The NPS's National Register Criteria for Evaluation are used for considering whether a property is eligible for inclusion in the National Register. The criteria found in the publication entitled *National Register Bulletin 15*, which may be obtained by writing the National Register of Historic Places, National Park Service, US Department of Interior, Post Office Box 37127, Washington D.C. 20013-7121.
- c. Many counties in Indiana have been surveyed to identify potential historic buildings, structures, objects, and districts. The results of these surveys have been published in *Interim Reports*. Some of the *Interim Reports* are available through purchase from Historic Landmarks Foundation of Indiana at (317) 639-4534; however, some *Interim Reports* are out of circulation. All *Interim Reports* are

available at the Indiana State Library, and many are available at local libraries and historical organizations.

- d. Historic preservation organizations and county historians may also have historical information on a particular resource or area. For a list of contact names, addresses, and telephone numbers, please check the Indiana Historical Society website at [www.indianahistory.org/](http://www.indianahistory.org/).
- e. Other sources that might be useful for identifying potential historic or archaeological resources include: Sanborn maps (available for reference at the main library of Ball State University or the Geography Library at Indiana University), U.S. Geological Survey maps, old atlases, census information, local, county, or regional histories and prehistory's, and other records indicating previous land use.

#### ◆ *Document Findings*

After evaluating the historical significance of the properties with the area of potential effects, the LUG must provide documentation of its findings to the consulting parties, public and SHPO.

#### ◆ *Federal Agency makes a determination of “Finding of No Historic Properties Affected”*

In the event that the LUG finds that *no historic properties will be affected*, the LUG shall:

- a. Notify SHPO of its findings and provide the following documentation:
  - 1. A description of the undertaking, specifying the Federal involvement, and its areas of potential effects, including photographs, maps, drawings, as necessary;
  - 2. A description of the steps taken to identify historic properties, including, as appropriate, efforts to seek information pursuant to 36 CFR 800.4(b); and
  - 3. The basis for determining that no historic properties are present or affected.
- b. Notify all consulting parties and make the above documentation available to the public for inspection (see Step 1). At this same time, the public must be informed of the “finding of *no historic properties will be affected*.”
- c. As long as all information/documentation has been submitted to the SHPO, the SHPO has 30 days to respond. If you have not received a response after the 30 days, you may proceed forward with your project and assume SHPO concurrence.

#### ◆ *Historic Properties Affected*

In the event that the LUG finds that there are historic properties which may be affected by the undertaking or the SHPO disagrees with a finding that no historic properties will be affected, the LUG shall:

- a. Notify all consulting parties including the SHPO and invite their views of the effects; and
- b. Proceed with the assessment of adverse effects

### ***Step 3: Assessing Effects on Historic Resources***

If the LUG finds that there are historic resources within the area of potential effects that may be affected, the LUG is responsible for applying the criteria of adverse effect for those properties in consultation with the SHPO and other consulting parties. The following is the criteria that must be applied to determine if the undertaking will have a “*finding of no adverse effect*” or a “*finding of adverse effect*.” (note: if your project meets even one of the criteria listed below, you must proceed with the “*Finding of Adverse Effect*”).

- a. Physical destruction of or damage to all or part of the property;
- b. Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation and provision of handicapped access, that is consistent with the Secretary’s Standards for the Treatment of Historic Properties (36 CFR Part 68) and applicable guidelines;
- c. Removal of the property from its historic location;
- d. Change of the character of the property’s use or of physical features within the property’s setting that contribute to its historical significance;
- e. Neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to an Indiana tribe or Native Hawaiian organization; and
- f. Transfer, lease, or sale of property out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure the long-term preservation of the property’s historic significance.

#### **◆ *Federal Agency makes a determination of “Finding of No Adverse Effect”***

The LUG makes a determination that the proposed action does not meet the criteria for a “*finding of no adverse effect*.” The LUG must notify SHPO, the consulting parties, and the public of its determination of “*finding of no adverse effect*.”

The LUG must provide the following documentation to the SHPO and consulting parties:

- a. A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, and drawings, as necessary;
- b. A description of the steps taken to identify historic properties;
- c. A description of the affected historic properties, including information on the characteristics that qualify them for the National Register;
- d. A description of the undertaking’s effect on historic properties.
- e. An explanation of why the criteria of no adverse effect was found; and
- f. Copies of summaries of any views provided by consulting parties and the public.

At this same time, the public must be informed of the “*finding of no adverse effect*,” and the documentation must be made available to the public for review.

As long as all information/documentation has been submitted to the SHPO, the SHPO has 30 days to respond. If you have not received a response after the 30 days, you may proceed forward with your project and assume SHPO concurrence.

◆ *Agreement of “Finding of No Adverse Effect”*

If the SHPO agrees to the “*finding of no adverse effect*,” the LUG can proceed forward with the undertaking.

◆ *Disagreement with “Finding of No Adverse Effect”*

If the SHPO or any consulting party disagrees with the “*finding of no adverse effect*,” the LUG should either consult with the disagreeing party to resolve the disagreement or request the Advisory Council to review the finding. The Council shall review the finding and notify the LUG of its determination as to whether the adverse effect criteria have been correctly applied within 15 days of receiving the documentation. The LUG shall proceed in accordance with the Advisory Council’s determination. If the Advisory Council does not respond within 15 days of the receipt of the finding, the LUG may assume the Advisory Council’s concurrence with the LUG’s finding and proceed accordingly.

However, if concurrence cannot be reached, the LUG shall proceed with a “*finding of adverse effect*.”

◆ *LUG makes a determination of “Finding of Adverse Effect”*

The LUG makes a determination that the proposed action does meet the criteria for a “*finding of adverse effect*.” The LUG shall work with the SHPO, consulting parties and the public to resolve the “*finding of adverse effect*.”

***Step 4: Resolving Adverse Effects***

When the LUG proposes a “*finding of adverse effect*,” the LUG shall do the following:

- a. Continue consultation to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate the adverse effects on historic properties pursuant to 36 CFR 800.6.
- b. Notify the Advisory Council of the finding, and provide the Council with the following documentation and where applicable invite the Advisory Council to participate in the consultation:
  1. A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, and drawings, as necessary;
  2. A description of the steps taken to identify historic properties;
  3. A description of the affected historic properties, including information on the characteristics that qualify them for the National Register;
  4. A description of the undertaking’s effect on historic properties.

5. An explanation of why the criteria of no adverse effect was found applicable or inapplicable including any conditions or future actions to avoid, minimize, or mitigate adverse effects; and
6. Copies of summaries of any views provided by consulting parties and the public.
- c. Assuming there is agreement, execute a memorandum of agreement (MOA) that established how the adverse effects will be resolved, and asks the SHPO, and any invited signatories or concurring parties to sign the MOA.
- d. Provide the following to the Advisory Council: the Memorandum of Agreement, and documentation. The documentation should include any substantive revisions or additions to the documentation provided to the Council, and evaluation of any measures considered to avoid or minimize the undertaking's adverse effects, and a summary of the views of consulting parties and the public.

#### ◆ *Summary*

The best way to reduce the time needed for the Section 106 review is for LUG applicants to plan their projects so as to avoid adverse effects on historic properties. This can be done if the LUG identifies all historic properties or important archaeological sites at the beginning of project planning, and using “*The Secretary of Interior’s Standards for Historic Preservation Projects*” as a guide in designing the project that will affect historic properties, and consult with the SHPO before reaching final decisions on project design.

### **B. Not for Profits & For Profits – Section 106 Review Process**

Based on the new Section 106 regulations (36 CFR Part 800), only federal agencies (Indiana Housing Finance Authority) should be making determinations as to the following: “*finding of no historic properties affected,*” *finding of no adverse effect,*” or a “*finding of adverse effect.*” However, IHFA will still be requiring that the NFP or FP do all of the gathering of the documentation on each site address. Therefore, after the NFP or FP collects all necessary documentation and makes one of the three determinations, you shall provide all necessary documentation to IHFA. IHFA will forward a letter to the State Historic Preservation Office (SHPO) regarding the determination along with all applicable documentation.

#### ◆ *Purpose of the Section 106 Review Process*

Section 106 of the National Historic Preservation Act requires the Federal Agency take into account the effects of their undertakings on historic properties and afford the Advisory Council a reasonable opportunity to comment on such undertakings.

#### ***Step 1: Initiating the Section 106 Review Process***

- a. The IHFA must send a letter to the State Historic Preservation Officer (SHPO) authorizing consulting parties to participate in the Section 106 Review Process. The consulting parties are to gather information for the Section 106 Review process, but should not be submitting documentation to the SHPO. IHFA will send the letter

authorizing the consulting parties when you inform your IHFA Allocation Analyst that you would like to initiate the Section 106 Review process.

- b. You shall make the public aware of the project/undertaking by publishing a legal notice in the local newspaper of the project. Please note: if this is a scattered site undertaking, the public must be made aware of each individual property address.

## ***Step 2: Identifying Historic Resources***

The NFP, FP or any of the consulting party members “shall make reasonable and good faith efforts to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey.”

### ***◆ Determining the Scope of Identification Efforts Though the Area of Potential Effects***

You need to determine the area of potential effects, which means the geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking. It is especially important to note that the area of potential effects is not influenced by the preexisting awareness of historic or non-historic resources. Defining the area of potential effects is the first step for determining the scope of identification efforts and needs to be established before one begins to seek information to assess the potential historic properties. To define the area of potential effects, one must take into account effects that are direct or indirect, cumulative, later in time, or at a distance. Once a good faith effort had been made to define the area of potential effects, then it is necessary to consult with the Indiana SHPO. The NFP can enlist the services of other consulting parties to assist in this step; however, IHFA would need to be made aware of other consulting parties, as IHFA would be required to notify the SHPO of consulting parties joining the process.

### ***◆ Evaluating Historic Resources***

Below is a list of several sources that can be used in evaluating historic resources:

- a. The National Park Service (NPS) maintains a database list of all properties that are currently listed in the National Register of Historic Places. The information is available through the NPS web site, [www.cr.nps.gov/nr/](http://www.cr.nps.gov/nr/).
- b. The NPS’s National Register Criteria for Evaluation are used for considering whether a property is eligible for inclusion in the National Register. The criteria found in the publication entitled *National Register Bulletin 15*, which may be obtained by writing the National Register of Historic Places, National Park Service, US Department of Interior, Post Office Box 37127, Washington D.C. 20013-7121.
- c. Many counties in Indiana have been surveyed to identify potential historic buildings, structures, objects, and districts. The results of these surveys have been published in *Interim Reports*. Some of the *Interim Reports* are available through purchase from

Historic Landmarks Foundation of Indiana at (317) 639-4534; however, some *Interim Reports* are out of circulation. All *Interim Reports* are available at the Indiana State Library, and many are available at local libraries and historical organizations.

- d. Historic preservation organizations and county historians may also have historical information on a particular resource or area. For a list of contact names, addresses, and telephone numbers, please check the Indiana Historical Society website at [www.indianahistory.org/](http://www.indianahistory.org/).
- e. Other sources that might be useful for identifying potential historic or archaeological resources include: Sanborn maps (available for reference at the main library of Ball State University or the Geography Library at Indiana University), U.S. Geological Survey maps, old atlases, census information, local, county, or regional histories and prehistory's, and other records indicating previous land use.

#### ◆ *Document Findings*

After evaluating the historical significance of the properties within the area of potential effects, the NFP or FP must provide documentation of its findings to IHFA and the public. The NFP shall make the public aware of its findings through a legal notice and make the documentation available to the public. IHFA will forward all of the documentation to the SHPO and the consulting parties.

#### ◆ *NFP or FP makes a determination of “Finding of No Historic Properties Affected”*

In the event you find that “*no historic properties will be affected*,” you shall:

- a. Notify IHFA of its findings and provide the following documentation:
  - 1. A description of the undertaking, specifying the Federal involvement, and its areas of potential effects, including photographs, maps, drawings, as necessary;
  - 2. A description of the steps taken to identify historic properties, including, as appropriate, efforts to seek information pursuant to 36 CFR 800.4(b); and
  - 3. The basis for determining that no historic properties are present or affected.
- b. Make the above documentation available to the public for inspection. The NFP shall make the public aware of the “*no historic properties will be affected*” by publishing a legal notice in the local newspaper of the project.
- c. IHFA will forward the documentation received from you as well as the determination that “*no historic properties will be affected*” to the SHPO and all consulting parties.
- d. The SHPO will respond to the NFP or FP and all consulting parties.

#### ◆ *Historic Properties affected*

In the event that the NFP or FP finds that there are historic properties which may be affected by the undertaking or the SHPO disagrees with a finding that no historic properties will be affected, the NFP or FP shall notify IHFA so that IHFA can:

- a. Notify all consulting parties including the SHPO and invite their views of the effects; and
- b. Proceed with the assessment of adverse effects

### ***Step 3: Assessing Effects on Historic Resources***

If the NFP or FP finds that there are historic resources within the area of potential effects that may be affected, the NFP or consulting parties are responsible for applying the criteria of adverse effect for those properties in consultation with the SHPO and other consulting parties. The following is the criteria that must be applied to determine if the undertaking will have a “*finding of no adverse effect*” or a “*finding of adverse effect*.” (note if your project meets even one of the criteria listed below, you must proceed with a “*Finding of Adverse Effect*.”)

- a. Physical destruction of or damage to all or part of the property;
- b. Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation and provision of handicapped access, that is consistent with the Secretary’s Standards for the Treatment of Historic Properties (36 CFR Part 68) and applicable guidelines;
- c. Removal of the property from its historic location;
- d. Change of the character of the property’s use or of physical features within the property’s setting that contribute to its historic significance;
- e. Neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to an Indiana tribe or Native Hawaiian organization; and
- f. Transfer, lease, or sale of property out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure the long-term preservation of the property’s historic significance.

#### **◆ *NFP or FP makes a determination of “Finding of No Adverse Effect”***

The NFP or FP makes a determination that the proposed action does not meet the criteria for a “*finding of adverse effect*.”

The NFP or FP shall provide the following information to IHFA:

- a. A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, and drawings, as necessary;
- b. A description of the steps taken to identify historic properties;
- c. A description of the affected historic properties, including information on the characteristics that qualify them for the National Register;
- d. A description of the undertaking’s effect on historic properties;
- e. An explanation of why the criteria of no adverse effect was found; and
- f. Copies of summaries of any views provided by consulting parties and the public.

IHFA will provide the documentation to SHPO and all of the consulting parties.

At this same time, the NFP must inform the public of the “*finding of no adverse effect*.” The public must be made aware of the finding through a legal notice being published the local newspaper and making the documentation available for public review.

◆ *Agreement of “Finding of No Adverse Effect”*

If the SHPO agrees to the “*finding of no adverse effect*,” the SHPO will issue a we concur letter to IHFA and a carbon copy of the letter to the NFP or FP. When this letter is received the Section 106 Review is complete, and the NFP can proceed with the undertaking.

◆ *Disagreement with “Finding of No Adverse Effect”*

If the SHPO or any consulting party disagrees with the “*finding of no adverse effect*,” the IHFA should either consult with the disagreeing party to resolve the disagreement or request the Advisory Council to review the finding. The Council shall review the finding and notify the IHFA of its determination as to whether the adverse effect criteria have been correctly applied within 15 days of receiving the documentation. The IHFA shall proceed in accordance with the Advisory Council’s determination. If the Advisory Council does not respond within 15 days of the receipt of the finding, the IHFA may assume the Advisory Council’s concurrence with the IHFA’s findings and proceed accordingly.

However, if concurrence cannot be reached, the IHFA shall proceed with a “*finding of adverse effect*.”

◆ *NFP or FP makes a determination of “Finding of Adverse Effect”*

The NFP or FP makes a determination that the proposed action does meet the criteria for a “*finding of adverse effect*.” The IHFA shall work with the NFP, SHPO, consulting parties, and the public to resolve the “*finding of adverse effect*”.

***Step 4: Resolving Adverse Effects***

When the IHFA proposes a “*finding of adverse effect*,” the NFP or FP shall do the following:

- a. Continue consultation to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate the adverse effects on historic properties pursuant to 36 CFR 800.6.
- b. Notify the Advisory Council of the finding, and provide the Council with the following documentation and where applicable invite the Advisory Council to participate in the consultation:
  1. A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, and drawings, as necessary;
  2. A description of the steps taken to identify historic properties;
  3. A description of the affected historic properties, including information on the characteristics that qualify them for the National Register;
  4. A description of the undertaking’s effect on historic properties.

5. An explanation of why the criteria of no adverse effect was found applicable or inapplicable including any conditions or future actions to avoid, minimize, or mitigate adverse effects; and
  6. Copies of summaries of any views provided by consulting parties and the public.
- c. Assuming there is agreement, execute a memorandum of agreement (MOA) that established how the adverse effects will be resolved, and asks the SHPO , and any invited signatories or concurring parties to sign the MOA.
  - d. IHFA must provide the following to the Advisory Council: the Memorandum of Agreement and documentation. The documentation should include any substantive revisions or additions to the documentation provided to the Council, and evaluation of any measures considered to avoid or minimize the undertaking's adverse effects, and a summary of the views of consulting parties and the public.

### ◆ *Summary*

The best way to reduce the time needed for the Section 106 review is for applicants to plan their development so as to avoid adverse effects on historic properties. This can be done if the NFP or FP identifies all historic properties or important archaeological sites at the beginning of project planning, and using “*The Secretary of Interior’s Standards for Historic Preservation Projects*” as a guide in designing the project that will affect historic properties, and consult with the SHPO before reaching final decisions on project design.